



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTON  
ATTORNEY GENERAL

October 15, 1990

Ms. Diana L. Granger  
Deputy City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR90-496

Dear Ms. Granger:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10592.

The City of Austin received an open records request for "all statements and documents related to the investigation of the incident involving" two named city employees. You contend the requested information comes under the protection of sections 3(a)(3) and 3(a)(11) of the Open Records Act.

You contend that section 3(a)(3) excepts this material from required disclosure, despite the lack of pending litigation, because "given the involvement of AFSCME at this time, it is entirely reasonable to anticipate that disciplinary action could lead to litigation including City grievance procedures, formal discrimination complaints and litigation." To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision Nos. 452 (1986); 360 (1983). The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision No. 328 (1982). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. Id. You have not shown that the requested material meets this initial test; consequently you may not withhold this information pursuant to section 3(a)(3).

Section 3(a)(11) of the act excepts advice, opinion, or recommendation intended for use in the entity's deliberative

process. Open Records Decision No. 464 (1987). Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). You have submitted to this office for review thirteen separate statements concerning the "incident" at issue here. These statements consist of objective observations of the incident and therefore do not come under the protection of section 3(a)(11). You must therefore release the statements.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-496.

Yours very truly,



John Steiner  
Assistant Attorney General  
Opinion Committee

JS/RWP/le

Ref.: ID# 10592

cc: Greg Powell  
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